

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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ELECTRIC INSURANCE COMPANY, a/s/o  
STEVEN BERINGER and PATRICIA  
BERINGER,

Plaintiff,

v.

ELECTROLUX NORTH AMERICA, INC.,

Defendant.

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: Hon. Faith S. Hochberg, U.S.D.J.  
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: Civil No. 09-3792 (FSH) (MAS)

**ORDER**

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: Date: November 17, 2011  
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**HOCHBERG, District Judge:**

This matter having come before the Court upon the Report & Recommendation of Magistrate Judge Shipp [docket # 136] which recommends that this Court “deny Defendant’s summary judgment motion as to the New Jersey Product Liability Act claim, grant Defendant’s summary judgment motion as to the Breach of Express Warranty claim, and deny without prejudice Plaintiff’s cross-motion to strike the improper installation defense;” and Defendant having filed an objection to the portion of the Report & Recommendation denying Defendant’s summary judgment motion as to the New Jersey Product Liability Act claim, arguing that the Magistrate Judge erred in both concluding that “plaintiff can rely on the indeterminate product defect test” and finding that “there are issues of fact with respect to plaintiff’s ability to satisfy the two prongs of the test”; and the Court finding that Defendant’s objection is without merit because Magistrate Judge Shipp properly analyzed the indeterminate product defect test and concluded that there were genuine issues of material fact as to both prongs of the test; and the

Court having reviewed Defendant's objection to the Report & Recommendation; and Plaintiff having not filed an objection to the Report and Recommendation; and this Court having reviewed *de novo* the Report and Recommendation; and good cause appearing;

**IT IS** on this 17th day of November, 2011,

**ORDERED** that the Report and Recommendation of Magistrate Judge Shipp is **ADOPTED** as the opinion of this Court; and it is further

**ORDERED** that Defendant's motion for summary judgment [docket # 104] is **GRANTED** in part and **DENIED** in part as stated more fully herein below; and it is further

**ORDERED** that Defendant's motion for summary judgment as to Plaintiff's Breach of Express Warranty claim is **GRANTED**; and it is further

**ORDERED** that Defendant's motion for summary judgment as to Plaintiff's New Jersey Product Liability Act claim is **DENIED**; and it is further

**ORDERED** that Plaintiff's cross-motion to strike Defendant's improper installation defense [docket # 109] is **DENIED** without prejudice.

/s/ Faith S. Hochberg  
Hon. Faith S. Hochberg, U.S.D.J.